

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

JOSEPH D. ROCKETT, III individually,
and doing business as TENNESSEE
ALARM,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by JOSEPH D. ROCKETT, III, individually and doing business as TENNESSEE ALARM located in Smyrna, Tennessee ("Respondent"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") and MARK WILLIAMS, Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices included offering home security systems and installation to Tennesseans through "Val-Pak" coupons. The coupons offered Tennessee Alarm's security systems to Tennesseans at "no cost", "no charge" or "free" without clearly and conspicuously disclosing monetary and other restrictions in the initial offer or coupon. Additionally, Respondent's coupons promoted a "2 Months FREE Monitoring with Val-Pak Coupon Only" and "(1) Additional Piece of Equipment FREE With Val-

Pak Coupon Only." Consumers were not permitted to use both coupons even though the advertisement did not disclose that material limitation. Additionally, if a consumer elected to receive a "free" fire alarm, the cost of the monitoring increased even though the advertisement did not disclose that restriction. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act"). B.

Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

3. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Joseph D. Rockett, III, individually and doing business as Tennessee Alarm, shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

3.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all

provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.

3.2 Respondent shall fully comply with Tenn. Code Ann. § 47-18-120 when offering a prize, gift, award, incentive promotion or thing of value to a consumer. (As used in this Assurance, "consumer" shall mean any natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however structured.)

3.3 When offering a free item, prize, gift, award, incentive promotion or thing of value, Respondent shall clearly, conspicuously and affirmatively disclose the approximate verifiable retail price of each prize, gift, award, incentive promotion or thing of value offered. Without limiting the scope of this section, for example, if the Respondent offers a free security system or installation, Respondent must clearly, conspicuously and affirmatively disclose the verifiable retail value. Additionally, Respondent shall have substantiation for the approximate verifiable retail value as required by Tenn. Code Ann. §§ 47-18-120(c)(1)(D) and (E). Such substantiation shall be provided in writing to the Attorney General, within five (5) business days of receipt of such request.

3.4 Respondent shall be prohibited from failing to clearly, conspicuously and affirmatively disclose that an offer has an expiration date or ending date in the initial solicitation, if such is the case.

3.5 Respondent shall be prohibited from representing that a person has won or will receive certain items free of charge, if receipt of the prize or free product or service is conditioned upon: (a) listening to or observing a sales promotion, (b) making a purchase, or (c) incurring any monetary obligation, unless each such condition is clearly, conspicuously and affirmatively disclosed in the initial offer. Without limiting the scope of this provision, the Respondent shall clearly, conspicuously and affirmatively disclose in the initial advertisement the actual amount of the monetary obligation that the person must incur to receive the prize or "free" product or service as required by Tenn. Code Ann. § 47-18-120(c)(1)(C).

3.6 In an initial advertisement or offer, Respondent shall be required to clearly, conspicuously and affirmatively disclose the types and categories of restrictions, qualifications, or other considerations, that must be satisfied before the consumer or person is entitled to receive or use the prize, free item or product offered or promoted as required by Tenn. Code Ann. § 47-18-120(c)(1)(H).

3.7 Respondent shall be required to clearly, conspicuously and affirmatively disclose, in the initial advertisement or offer, the approximate total of all costs, fees or other monetary obligations that must be satisfied before the person is entitled to receive or use the prize, free item or product offered or promoted as required by Tenn. Code Ann. § 47-18-120(c)(1)(I).

3.8 Respondent shall be required in the initial advertisement or offer, or at a minimum before an offer can be accepted, to clearly, conspicuously and affirmatively disclose, at least the following:

(A) A general description of the types or categories of restrictions, qualifications or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or product or service offered, including but not limited to any credit approval requirements, ownership of a home requirements, the existence of and the amount of the automatic renewal of the monitoring agreement, the amount of the monitoring agreement costs and any potential increases, the existence of and amount of cancellation penalties and the existence of a requirement that the consumer maintain certain types of insurance and the costs of such insurance;

(B) The refund, exchange, return or cancellation policies in regard to any promotional offer; and

(C) The approximate total of costs, fees or other monetary obligations that must be satisfied before the person is entitled to receive or use the prize, product or service offered, including but not limited to, the existence of and amount of installation costs, the existence of and amount taxes, the existence of a requirement that the consumer maintain certain types insurance and the costs of such insurance, monitoring, and cancellation penalties.

3.9 Respondent shall be prohibited from using the phrases "basic system", "essential package" (or terms or phrases of similar import) without clearly, conspicuously and affirmatively disclosing each of the products or services actually included within the system or package offered.

3.10 Respondent shall be prohibited from offering coupons or other discounts to consumers which have limitations which are not clearly and conspicuously disclosed on the coupon. Without limiting the scope of this provision, Respondent may not prohibit a consumer from using more than one coupon if the coupons do not clearly and conspicuously disclose that fact on each coupon.

3.11 Respondent shall be strictly prohibited from representing that monitoring will cost a certain amount if that amount automatically increases when the consumer receives a "free" piece of equipment by use of Respondent's coupon or if some other undisclosed fact will automatically increase the monthly cost.

3.12 Respondent shall be required to fully comply with the Federal Trade Commission, Guide Concerning Use of the Word "Free" and Similar Representations Guidelines, 16 C. F. R. 251.

3.13 Respondent shall be required to review any employee's record if Respondent receives two (2) or more complaints or other reliable information indicating that an employee has made any misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondent shall promptly discipline employees for such employee misconduct and review all sales of Respondent's security systems by that employee to ensure that no violations of this Assurance occurred. Further, Respondent shall report any such findings to the Attorney General within five(5) business days of discovery if the conduct occurred within the State of Tennessee or involved a Tennessee consumer.

3.14 Respondent shall be required to have a company policy, rule or requirement prohibiting the use or distribution of unapproved or unauthorized promotional materials, including advertisements by its employees. Further, Respondent shall be required to take appropriate steps to fully enforce that policy, rule or requirement including taking appropriate disciplinary actions for any employee who violates such policy.

IV. ACKNOWLEDGMENT OF THE RESPONDENT

4.1 Respondent represents and warrants to the State that he will inform himself and his employees about the Consumer Protection Act, the Assurance and the Federal Trade Commission "Free" Guidelines and the need for full compliance with them. Respondent understands that the State expressly relies upon this representation; if it is false, misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

4.2 Respondent represents and warrants that he has only been in business for one year and during that year his business operated at a substantial loss. Respondent further has informed the State that he is operating a very small business with only himself, two other employees and two independent contractors that operate as salespersons and installers. Respondent understands that the State expressly relies upon this representation; if it is false, misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

V. RESTITUTION

5.1 Respondent represents and warrants that no consumers have complained to Respondent about its offering of "no cost", "free" or "\$0.00" security systems, installations or other equipment or items indicating that the consumer did not understand the monetary and/or other conditions, restrictions and limitations on the offer. Further, any consumer who complained that he/she was prohibited from using both coupons was, in fact, permitted to use both coupons for a single purchase. Respondent understands that the State expressly relies upon this representation; if it is false, misleading, deceptive or unfair in any way, the State may move to set aside this Assurance or request that the Respondent be held in contempt.

VI. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorneys' Fees" on the day of execution of this Assurance.

VII. PAYMENT TO THE GENERAL FUND

7.1 Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee as a payment to the General Fund of the State of Tennessee. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - General Fund Payment" on the day of execution of this Assurance.

VIII. CONSUMER EDUCATION FUNDING

8.1 Respondent shall pay the sum of Five Hundred and 00/100 Dollars (\$ 500.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

IX. FORBEARANCE ON EXECUTION AND DEFAULT

9.1 No execution or garnishment on the monetary portion of this Assurance and Agreed Order shall issue so long as the Respondent makes payment in accordance with paragraph 9.2 herein. In the event Respondent fails to make any such payment within twenty (20) days of its due date, the entire balance of this Assurance and Agreed Order then remaining may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. §47-14-121 from the date of entry of this Assurance and Agreed Order. Respondent agrees to pay reasonable attorneys' fees and costs associated with any such collection efforts.

9.2 Payment shall be made to the Consumer Protection Division, Office of Attorney General as follows: \$500.00 on June 15, 1999 and \$150.00 due July 15, 1999 and the fifteenth of each month for thirteen payments and a final payment of \$50.00 and thereafter until paid in full.

9.3 Respondent shall be required to retain proof of all payments to the State in the form of canceled checks for each payment for a full twenty-four (24) months following its final payment to the State. Respondent shall provide proof of all payments to the State within ten (10) days of a request for such information.

X. MONITORING AND COMPLIANCE

10.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within five (5) business days of the receipt of the request, at the Office of the Attorney General, Consumer Protection Division, 425 Fifth Avenue North, 2nd Floor, Nashville, Tennessee, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

10.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondent.

XI. PRIVATE RIGHT OF ACTION

11.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

XII. PENALTY FOR FAILURE TO COMPLY

12.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

12.2 Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce this Assurance and Order against the Respondent.

XIII. REPRESENTATIONS AND WARRANTIES

13.1 Respondent represents and warrants that the execution and delivery of this Assurance is his free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

13.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

13.3 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

13.4 Neither Respondent nor anyone acting on his behalf shall state or imply or cause to be stated or

implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

13.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

13.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

13.7 Respondent warrants and represents that Joseph D. Rockett, III, individually and doing business as Tennessee Alarm is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

13.8 Joseph D. Rockett, III, individually and doing business as Tennessee Alarm represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

13.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

13.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

13.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

13.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against

Respondent.

13.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

13.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

13.16 Respondent represents and warrants he had the benefit of the legal counsel of Vernon A. Melton, Jr., Attorney at Law, in the negotiation of this Assurance.

XIV. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

14.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

XV. FILING OF ASSURANCE

15.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which he may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that he consents to the entry of this Assurance and Agreed Order without further notice.

XVI. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS

16.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to Joseph D. Rockett, III, individually and doing business as Tennessee Alarm, each of his officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities he controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on his or their behalf.

XVII. NOTIFICATION TO STATE

17.1 Any notices required to be sent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following

addresses:

For the State:

Jennifer L. Rawls

Assistant Attorney General

Office of the Attorney General

Consumer Protection Division

425 Fifth Avenue North, 2nd Floor

Nashville, Tennessee 37243

For the Respondent:

Joseph D. Rockett, III

Owner

Tennessee Alarm

1203A Hazelwood Drive

Smyrna, Tennessee 37167

Courtesy copy:

Vernon A. Melton, Jr.

Attorney at Law

211 Donelson Pike, Suite 210

Nashville, TN 37214

17.2 For three (3) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General by providing a copy of any filings required to be sent to the Tennessee Alarm Board or the Secretary of State reflecting any changes in the Respondent's corporate name or names under which it does business or advertises to the public. Further, within five (5) business days of receipt of a written request, Respondent will inform the Attorney General of any name changes or any names under which it does business or advertises to the public in Tennessee that have occurred after entry of this Assurance.

XVIII. COURT COSTS

18.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.